declared an offence. The presumption of guilty knowledge raised in the sub-section is opposed to the ordinary principles of Criminal Law. Under the existing Regulation, the prosecution will have to establish guilty knowledge before a conviction is secured. No reason is alleged by the learned Mover for introducing this apparently indefensible provision in the draft Bill. Possibly, it may be suggested in support of this position that it may be difficult to secure the conviction unless this presumption is drawn in favour of the prosecution. This difficulty will not be peculiar to a prosecution under this Regulation. I am aware that in recent times in some fiscal enactments a similar presumption is raised in support of the prosecution. The conservation of State finances is a matter of general importance and a departure from the general Criminal Law in fiscal matters may be perhaps justifiable on grounds of public policy. There is no justification for extending this rule to a prosecution under the Motor Vehicles Regulation. With this reservation, I submit that the principle of the Bill may be affirmed."

Mr. Govinda Menon:—

"I fully agree with Mr. Krishna Aiyangar in what he has said."

Mr. Gopala Pillai:—

"While affirming the principle of the Bill, I am at one with Mr. Krishna Aiyangar in the observation that he has made in regard to the burden of proof being shifted on to the defence."

Mr. Subba Aiyar:—

"I do not believe that there is any objectionable principle sought to be introduced. If a motor vehicle belonging to any particular individual is found to be in the possession or under the control of another individual, the presumption is that the owner lent it or that the latter got it with the permission of the owner. The Court may reasonably presume in such cases that the person who was using the motor vehicle obtained it by legitimate means, *viz.*, with the sanction of the owner. I think that this is a matter which can be settled by the Select Committee and that it does not affect the principle of the Bill. I therefore beg to move that the principle be affirmed."

Mr. Subba Aiyar's motion was carried.

Mr. Subba Aiyar then moved that the Bill be referred to a Select Committee consisting of Messrs. Chacko, Gopala Pillai and the Mover to report within two months.

Seconded by Mr. Rengaswami Aiyangar.

Carried.

THE CHITTIES BILL.

Mr. Subba Aiyar presented the report of the Select Committee on the Chitties Bill, and moved that the report and the Bill be taken up for consideration at once.

Seconded by Mr. Mahadeva Aiyar.

Carried.

SECTION 2.

Mr. Govinda Menon moved that Section 2 be recast as follows:—

"Unless otherwise expressly stated, the provisions of this Regulation shall apply to all chitties existing at the commencement of this Regulation", and in moving the amendment, he said:—

"Sir,

I have first to make a request in connection with this Bill, in regard to which, I do not think the Government have any interest to have the provisions in any particular manner. My request is that you will allow all the Members to give free play to their opinion. Proceeding to the subject, I beg to say that the object of my amendment is to insert a provision which will give retrospective effect to the law, *i. e.*, to apply the law to certain classes of existing chitties. I have set forth, in detail, in my dissenting memorandum, the reasons which have induced me to put forth this amendment. First of all, there are hundreds of chitties existing now, which, owing to the defective ways in which they are conducted, have given rise to numerous litigations. In fact, more than something like 30 per cent. of the cases in Courts have some connection with chitty transactions. It is all due to the want of effective control over the conduct of those chitties. Of course, when we make a Regulation, it is not common to give retrospective effect to the provisions of that Regulation. But, the present legislation, except in some cases, such as, registration, execution of security bonds and investment of the prize amount, embodies the principles of common law, if I may call it so, observed throughout the country by all foremen who conduct chitties in a regular manner. Many people have started chitties after the introduction of this Bill, with a view to avoid any restriction that may be placed upon them by this legislation. I say that this class of people should not be allowed to avoid the provisions of this law. I therefore suggest the inclusion in this Bill of all chitties started after the 1st Chingom 1092, so that the provisions of this Bill may bind them. There are again other classes of chitties which have yet a period ranging from six up to twenty and twenty five years to run. My question is, are these chitties to be outside the pale of this legislation? In my view, those chitties which have yet to run over a period of six years should also be included in the provisions of this Bill."

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The motion, not having been seconded, was lost.

President:—

"With reference to the remarks of Mr. Govinda Menon, I may say that he was perfectly right when he said that the Government have no special interest in passing this Bill. Of course, they have considerable interest in taking care of the welfare of the people. The mind of the Government is open with reference to the provisions of this Bill. I believe that Mr. Subba Aiyar has pondered carefully over the several amendments proposed by Mr. Govinda Menon and other gentlemen. I am also informed that he has had an informal discussion about some of these amendments outside the Council with some of the Non-official Members. I am also glad to observe that the Non-official Members themselves have had a discussion about these amendments before they came to the Council. So, we shall consider the amendments individually on their merits. Mr. Subba Aiyar who has had opportunities of considering these amendments in detail will be able to tell you what the attitude of the Government is with reference to each of them. In respect of particular amendments about which there is a difference of opinion, we shall have a free and open discussion. If the Members follow the procedure of holding informal discussions before coming to the Council in regard to all proposed legislations, such a course will certainly give considerable assistance to the Council as a whole in considering Bills."

SECTION 3. CLAUSE (11).

Mr. Gopala Pillai moved that the words "convened for the purpose of considering the resolution" be inserted between the words 'subscribers' and 'by' in line 2, and said that his amendment had as its object that the subscribers should have previous notice of the business to be transacted at the general meeting and that only those subjects for the discussion of which the meeting was called should be discussed at that meeting.

Seconded by Mr. Govinda Menon.

Mr. Subba Aiyar:—

"I think that there is much force in what Mr. Gopala Pillai says, because the object of the special resolution may be to change the terms of the variola itself, and, in order that a resolution may be passed by a majority of three-fourths of the subscribers, it is necessary that all the subscribers should at least know beforehand what is going to be discussed at the meeting, so that they may have an opportunity to be present on the occasion. I think that the words 'convened for the purpose' after the word 'meeting' will be quite enough, and that with this slight modification the amendment proposed may be accepted".

The amendment as modified by Mr. Subba Aiyar was adopted.

Mr. Krishna Aiyangar moved that the words "in value of the subscribers" be substituted for the words "of the ticket holders" in line 3.

Seconded by Mr. Gopala Pillai.

The amendment was accepted by Mr. Subba Aiyar and it was carried.

Mr. Gopala Pillai moved that the words "likely to be affected by such resolution" at the end of the Clause be deleted, and said that it would be difficult to decide in some cases the persons who were likely to be affected and that, in some other cases, as for instance, in a resolution seeking to alter the terms of the variola, all the subscribers were likely to be affected.

Mr. Krishna Aiyangar:—

"I beg to second the motion. As the Bill stands, there is no machinery for ascertaining the question who are the members likely to be affected by such a resolution. The earlier part of the Clause requires that a special resolution should be one passed at a meeting of the general body of the subscribers. I take it that it includes all classes of subscribers, whether prized or non-prized. It is at that meeting that the question as to who are the parties likely to be prejudiced by such a resolution has to be determined. The whole body of subscribers will certainly claim the right to have a voice in the determination of the question. After that question is decided, those who are found to have been specially affected by such a resolution will have to form a separate meeting by themselves, and by a majority of three-fourths, they may have to carry out any alteration in the terms of the variola or such other matters as are proposed to be disposed of by the special resolution. If you have to convene a meeting of all the subscribers for the determination of the question, I think it is very much easier to give all concerned the right to vote in any alteration of the terms of the variola. Otherwise, it will be attended with much practical difficulty. After all, there are not many cases where there can be said to be conflicting interests between the prized and the non-prized subscribers. One case of conflicting interest I can think of is whether it is desirable to terminate a chitty on the death of a particular foreman when there are more foremen than one. Section 33 contemplates cases where the remaining foremen may continue the chitty under a special resolution. Certainly, it should be to the interest of the non-prized subscribers to declare the chitty terminated as they get an additional advantage. The presence of the prized subscribers would then act as a corrective. It could not be said that the interests of non-prized subscribers are in any way prejudiced. The rights which are conferred on them under the variola at the time of commencement of the chitty will in no way be prejudiced."

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Mr. Subba Aiyar:—

"With reference to this I have to state that, when the matter was settled by the Select Committee, it was thought that the expression 'likely to be affected' was rather vague and also difficult to be ascertained at a meeting of the members. It was also thought that it might not be possible at the outset to decide whether the resolution as originally proposed or in the amended form in which it is passed affected prized or non-prized subscribers. Some may affect prized subscribers; some, non-prized subscribers; and some, both. It is with a view to safeguard the interest of all concerned that the expression "likely to be affected" was put in and was settled by the Select Committee. If we take into consideration what the nature of the special resolution is likely to be, we shall be able to understand better as to whether the retention of the expression is desirable or not. Under Section 7 of the Bill, we find that every variola shall contain the names of the subscribers and other particulars mentioned therein. Suppose that, during the progress of a chitty, the number of instalments is to be reduced by a special resolution. Such a change will affect both the prized and non-prized subscribers alike. There are cases in which only the non-prized subscribers are interested; for instance, the provisions concerning the Bank or Banks in which the prize amount has to be invested under Section 17 (2), necessarily affect the non-prized subscribers alone. The Bill as originally drafted said that the foreman, who has with him the monies of the prized subscribers in cases where the latter are not in a position to tender security, has to invest the monies in a Bank approved by the Government. The Select Committee thought that it would be rather difficult to substitute the opinion of the Government for the views of the subscribers themselves and that it would be desirable in the interests of the subscribers to have their own voice in the matter. Therefore, the Bill was amended to the effect that the variola should state the Bank or Banks in which the prize amount should be deposited. It will thus be found that, if money has been invested in a Bank and that if that Bank fails or closes business, a special resolution modifying the name of the Bank will have to be passed and this will affect only non-prized subscribers. The prized subscribers having drawn their prizes, cease to have any interest in the matter of the Bank in which that money has to be invested. It is thus clear that in this matter non-prized subscribers alone will be affected and it is not desirable that, in this question, the non-prized subscribers should be out-voted by the prized subscribers. Such a resolution requires to be passed by three-fourths of the number of non-prized subscribers. As my friend Mr. Krishna Aiyangar pointed out, where the chitty terminates under Section 33, the non-prized subscribers may condone the termination and agree to have the chitty continued. In that case, there is the special provision that the non-prized subscribers alone shall meet and that their votes shall be final. These are the particular classes of cases which affect only non-prized subscribers. There may be some cases in which prized subscribers alone are affected. So it is difficult to say which class of subscribers will be affected by any particular resolution. Some of the cases in which the non-prized subscribers are likely to be affected are specifically provided for in the Bill. As has been pointed out, the question of the Bank is a matter affecting the non-prized subscribers. If therefore the question is entirely to be left to the discretion of the subscribers and is to be provided for in the variola, I would propose the retention of the words 'likely to be affected by such resolution'. But if my friend Mr. Krishna Aiyangar's amendment with reference to Section 17 is to be accepted by the Council, I have no objection to the words "likely to be affected by such Resolution" being deleted. The proper course will be to consider this amendment after Section 17".

Mr. Subba Aiyar's suggestion to take up the amendment after Section 17 was considered was adopted.

SECTION 4.

Mr. Krishna Aiyangar proposed that the word 'but' be substituted for the words 'and yet' in line 1.

Seconded by Mr. Gopala Pillai.

Carried.

SECTION 6.

Mr. Krishna Aiyangar moved that the words 'in duplicate' be inserted between the words 'variola' and 'signed' in line 1, and spoke as follows:—

"The draft Bill provided for a variola and a true copy signed by the foreman being produced before the Registrar for the purpose of registration. The Bill also provided that the Registrar should register the original and retain it with him and return the copy to the foreman. The argument advanced by Mr. Subba Aiyar in introducing the Bill was that difficulty as to whether a particular subscriber signed the variola comes fairly frequently, that it would be desirable to have evidence of original signature retained in the custody of a Government Department and that it should be available when a controversy arises. It was on this ground that he submitted that the original might be retained with the Registrar. This was what he said then:—'It is therefore proposed that a foreman intending to start a chitty should have a variola with the necessary details prepared. Each subscriber is required to sign it in the presence of a witness who attests the same. The original is registered and the copy is returned with an endorsement that it is registered. The object of retaining the original and returning

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the copy is that the foreman may not tamper with the signatures in the original. The provision, to my mind, will remove all difficulties in the way of establishing whether a particular individual is a subscriber or not. When a doubt arises, the original in the Registrar's office may be called for'. But when the matter came before the Select Committee, they suggested that it was desirable that the original itself should be returned to the foreman and that the Registrar might retain the copy. The amendment that I suggest is to put in a duplicate instead of a copy. Thus, while you have the safeguards which Mr. Subba Aiyar originally wanted, you meet the wishes of the Members of the Select Committee also. Nothing is lost by insisting on a duplicate of the variola being prepared and presented for registration. The additional expenditure is only very small. According to my proposal, the foreman will be in possession of a record signed by all the subscribers and the Registrar will also keep a duplicate of the same."

Seconded by Mr. Gopala Pillai.

Mr. Subba Aiyar :—

"The idea that a foreman will generally be a respectable person weighed with the Select Committee. They considered that when the originals of all documents registered are returned after registration by the Registrar of Assurances, no differential treatment need be had with reference to the original of a variola".

Mr. Krishna Aiyangar's motion was carried.

SECTION 7.

Mr. Krishna Aiyangar moved that the words 'and such other particulars relating to the chitty as are not repugnant to the provisions of this Regulation' be added as Clause 12, and said :—

"The provisions embodied in Section 7 are not exhaustive. The Bill itself contemplates the inclusion of all other matters that cannot be brought under any one of these heads. I am only for the insertion of a provision which in practical working in a Court of Law will not lead to misconception".

Seconded by Mr. Subrahmanya Pillai.

Mr. Subba Aiyar :—

"The Section does not say that the variola shall contain only those particulars that are mentioned therein. There is absolutely no objection to any other provision being inserted in it".

The amendment was put to the vote and lost.

SECTION 8.

Mr. Gopala Pillai moved that, in consequence of the amendment carried in regard to the insertion of the words 'in duplicate' in Section 6, the following be substituted for this Section :—

"Every variola with its duplicate shall be filed by the foreman with the Registrar who shall register and return the variola with an endorsement that the chitty is registered.

On the registration of the variola, the Registrar shall endorse on the duplicate a certificate that the chitty is registered and retain it in his office."

Seconded by Mr. Krishna Aiyangar.

Carried.

SECTION 9.

Mr. Krishna Aiyangar moved that the words "all the requirements of this Regulation in respect of registration and of matters precedent and incidental thereto have been complied with and that" be deleted, and spoke as follows:—

"Section 5 merely insists on the registration of a variola to validate a chitty. There is no necessity for presuming that the signatures of subscribers and of attesting witnesses in the variola are all genuine and for excluding evidence of their being forged when a dispute arises as to their genuineness. Section 9 would stand in the way of a forgery being established in a Court of Law by shutting out all evidence. There is no necessity for raising a conclusive presumption as regards these matters."

Seconded by Mr. Gopala Pillai.

There was some discussion, after which, Mr. Krishna Aiyangar's motion was carried.

Mr. Govinda Menon moved that Sections 8 and 9 be renumbered as Section 8 (1) and 8 (2), and that the following be added as Section 9:—

"If a foreman defaults in complying with the provisions of Sections 5 and 8 (1), he shall be liable to a fine not exceeding two hundred rupees."

Mr. Gopala Pillai:—

"I beg to second the motion. In as much as lotteries have been prohibited and rendered penal, I think that this provision should be extended to those chitties which will not be lotteries, but which will become invalid according to this Bill. The object of the present

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legislation is to discourage those chitties. The best method of discouraging them is to make it penal to conduct them, so that they may not see the light of day in order to defraud the people."

Mr. Subba Aiyar:—

"I oppose this amendment. There is always a difference between the expressions 'illegal' and 'void'. We do not want to go the length of saying that every transaction which is not recognised by this Bill is illegal. All companies have to be registered under the Companies Regulation. But even that Regulation does not go the length of penalising the non-registration of companies. It was at the suggestion of the High Court that the present wording was adopted. I do not therefore think it necessary to accept the amendment."

Mr. Krishna Aiyangar:—

"I also oppose the proposed amendment. My friend's suggestion is to punish all foremen who do not register their chitties. Supposing that they are punished for fraud, do you give them the benefit conferred by the Regulation? This Regulation distinctly says that only certain chitties which conform to the requirements of the Regulation will be regarded as legal and others as void. It is not fair to tell the foreman of any such chitty that he is punished because he has not registered the variola and then to tell him that he does not get any legal rights thereunder."

Mr. Govinda Menon:—"What I say is that only such chitties as are covered by the definition given in the Regulation should be allowed to continue and that the others should be penalised."

The motion was put to the vote and lost.

SECTION 15 (1).

Mr. Krishna Aiyangar moved that the words 'before the first drawing of the chitty' be inserted between the words 'shall' and 'execute' in line 3.

Seconded by Mr. Subrahmanya Pillai.

Carried.

Mr. Krishna Aiyangar:—

"This Section requires the execution by every foreman of a security bond in respect of property sufficient for the realisation of twice the chitty amount, but the kind of property contemplated is not specified. It may mean immovable property or it may mean movable property. If it is immovable property, there is no difficulty. Supposing that it is movable property that is tendered as security, it may take the form of Travancore Government debenture bonds or British Indian War loan bonds or any other securities. If the foreman charges that kind of property by way of security for the purpose of a chitty and then coolly transfers it by endorsement in favour of a *bonafide* holder in due course under the general law, the rights proposed to be created under the security bond will not avail as against the holder of the security in due course. Therefore it is desirable that some arrangements should be made for securing the custody of the property for the benefit of the subscribers. I therefore propose the insertion of a Proviso at the end of sub-section (1) of Section 15, as follows:—

"Provided, however, that, if the property charged by way of security be movable property, the same shall be deposited in such manner as may be provided for in the variola, or with such authority as Our Government may appoint in this behalf". I also move that the word 'also' be inserted after the word 'Provided' in the existing Proviso to the Section."

Seconded by Mr. Gopala Pillai.

Carried.

Mr. Gopala Pillai:—

"The Section says that the foreman shall execute security for the realisation of twice the chitty amount. This contemplates cases in which the foreman takes only one ticket, so that when he makes default or when the chitty comes to a close, the security for twice the chitty amount furnished by the foreman would make up for the amount that he has drawn as prized subscriber and the amount that he will have to pay at the last instalment to one prized subscriber. In cases where the foreman takes, say five tickets, out of a total of twenty tickets, the subscribers may be put to difficulty. Under the provisions of the Bill, the foreman has a discretion to take security from the prized subscribers. He may waive the right to take security from them; so that in the case just referred to by me, if there is no security for the amounts drawn by the foreman for the five tickets, and if he does not make regular payments at the several instalments of the chitty, the subscribers will come to harm. So, I propose that the words 'of chitty amount for one more than the number of tickets subscribed for by the foreman' be inserted after the words 'realisation' in line 4 of the Section."

Seconded by Mr. Subrahmanya Pillai.

Mr. Subba Aiyar:—

"With reference to this, I have to say that, as it is, we are introducing a new provision requiring the foreman to give security for twice the chitty amount. We do not know how this itself is going to work. I am not therefore for asking the chitty foreman to find security

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at the outset for more than that amount. It is when he draws the prize that his liability to account to the subscribers comes in and therefore the mere fact that he becomes a subscriber for more than one ticket does not necessitate his giving security for any additional amount. With reference to the drawing of the prize amount, I would say there is absolutely no provision in the Bill which says that other things shall not be mentioned in the variola itself. That is to say, in cases where the foreman takes more than one ticket, the variola may provide the circumstances under which he will be allowed to draw the amount, whether by offering security in favour of subcribers or by tendering security at the outset. It is open to the subscribers to insist upon that being mentioned in the variola. In my view, the inclusion of the amendment proposed by my friend, Mr. Gopala Pillai, will work hardship."

Mr. Gopala Pillai's motion was put to the vote and lost.

Mr. Subrahmanya Pillai moved that the words 'approved of in writing either by the subscribers or by the Registrar of Chitties' be inserted between the words 'bond' and 'in' in line 3 of the same Section, and said:—

"The Section does not clearly say who should scrutinize the validity of the security bond. If there is no provision for the purpose, how could one be certain that the foreman will execute the required security bond in respect of properties to which he has a legal title. If a Marumakkathayam Karanavan offers a security, the Seshakars are at liberty to question the transaction at any stage and the bond may then turn out to be of doubtful validity. I have in mind the creation of an agency who would scrutinize the bond before it is registered."

The motion fell through as it was not seconded.

SECTION 17 (2).

Mr. Krishna Aiyangar moved that the words 'till seven days' in line 2 be deleted as no special purpose was to be gained by retaining it.

Seconded by Mr. Gopala Pillai.

Carried.

Mr. Krishna Aiyangar, in moving that the words "as may, from time to time, be approved of by Our Government and" be inserted between the words 'securities' and 'as' in line 3, spoke as follows:—

"The original draft Bill suggested that the foreman shall invest the same in such Bank or Banks or other securities as may, from time to time, be approved by Our Government and intimate the fact of such investment to the prize winner. The original idea was that the foreman ought to invest the amount in some security approved by the Government, that approval necessarily carrying with it certain amount of security for the investment itself. At the Select Committee that provision was altered into its present form, *viz*, 'as may have been agreed to in the variola'. If this stood by itself, there is nothing to be said against it. Section 10 (1) provides that every one of the articles of the variola may be altered by a special resolution and one of the articles of the variola, as recommended by the Select Committee is Clause (10.) (Bank or Banks in which the prize amount shall under Section 17 be invested). That will be a Bank agreed upon between the foreman and the subscribers. It is however open to the subscribers, at a later stage, to say that the Bank is not a safe one and to pass a resolution changing the Bank and the foreman will be bound by virtue of the special resolution to draw the money from the original Bank and re-invest it in the Bank or Banks named by the subscribers. According to the Select Committee, they would leave this to the discretion of the foreman and the subscribers together in the first instance, and to the opinion of the majority of the subscribers at a later stage when the terms of the variola are altered by a special resolution. So, the subscribers may compel the foreman, by a majority of votes, to invest the money in a Bank, of the solvency of which the foreman is not assured. Supposing that Bank fails, how does it affect the position of the foreman and the subscribers? The subscribers are not in any way prejudiced. The liability of the foreman to make good the prize amount to the subscribers continues even in spite of the investment in the Bank selected for him by them, in which he himself had no confidence. If the Council is prepared to hold that the liability of the foreman is determined the moment he invests the money in any Bank selected for him by the subscribers, I have nothing to urge. But the Regulation makes the foreman liable to the subscribers for the amounts due to them under Section 19, sub-section (1), without any reference to the solvency or otherwise of the Bank concerned. I therefore suggest that we may either go back to the provision in the original Bill or that, if there is any difficulty in accepting it, my present amendment may be accepted. I leave to the subscribers the right of choosing the Bank from any of the securities that the Government may approve of, so that the foreman may not be prejudiced by any wrong selection".

Seconded by Mr. Gopala Pillai.

Mr. Subba Aiyar:—

"The original idea was that the Government should declare the Banks or other securities in which the prize amount should be deposited. But, at the Select Committee, the question was raised as to why the Government should interfere in a purely private matter, *viz*, as to where the money should be invested. And it was thought that it would be safe to leave the matter to the subscribers themselves. With reference to my friend's argument that the foreman will be put to considerable difficulty when the Bank is altered at the instance of the subscribers by a

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special resolution, there is no doubt some force in it. But I do not know whether any restriction should be placed as to the deposit of the amount in a particular Bank. There are two views in this matter. One is that Government should not interfere concerning the Bank or Banks in which the subscribers themselves want to have the investment, and the other is that, if Government decide the Bank or security, the subscribers need not state in the variola at all which of these they would prefer, as the matter may be left to the discretion of the foreman himself. Anyhow, I leave the matter to the general sense of the Council."

Mr. Subrahmanya Aiyar:—

"What Mr. Krishna Aiyangar points out is that there is no provision in the Bill, declaring that the foreman's responsibility ceases with the investment of the money in a Bank approved by the share-holders. If so, it is unfair to the foreman. If his responsibility does not cease with the investment of the amount, what is the position of the Government in the matter? Suppose the Government choose a particular Bank and that Bank fails; people may then be put to loss. Why should the Government place themselves in an awkward position in reference to a chitty transaction? I am for retaining the Clause as it is and for modifying Section 19, sub-section (1), in the light of the remarks made by Mr. Krishna Aiyangar".

President:—

"In suggesting that the Government should choose the Bank or Banks, Mr. Krishna Aiyangar's idea is that there would be greater guarantee of solvency."

Mr. Govinda Menon:—

"The position taken by Mr. Krishna Aiyangar is in a way sound and it obviates the foreman's difficulty in investing the amount in the Bank selected by the subscribers."

Mr. Subrahmanya Aiyar.

"In case of difference of opinion between the foreman and the members, the amount should be deposited in the Government Savings Bank."

President:—

"That is a new amendment."

Mr. Daniel:—

"I am in favour of the amendment proposed by Mr. Krishna Aiyangar."

Mr. Chacko:—

"I think it quite unjust to hold the foreman responsible for any loss when the money is invested in a Bank which he himself has not chosen. I think it is better to accept the amendment proposed by Mr. Krishna Aiyangar."

Mr. Kuriyan:—

"I am entirely against Government selecting any Bank except their own Savings Bank. Why should they say that one Bank is more reliable than another?"

Mr. Mahadeva Aiyar:—

"I was one of the Members of the Select Committee. The question arose then as to whether the Government should have at all anything to do with the selection of the Banks, and we thought that it should be left entirely to the subscribers. In the light of what Mr. Krishna Aiyangar has said, there is some difficulty for the foreman in the matter of investing the prize amount in a Bank to which he cannot agree. Even then, I think the question may be left to the subscribers and the foreman. I cannot understand why the Government should have anything at all to do with it."

Mr. Raman Pillai:—

"As long as the foreman is liable for the amount, his position should be sufficiently safeguarded. I think the investment originally agreed to should not be subsequently altered without the consent of the foreman. There must be a provision in the Bill to that effect."

Mr. Raja Ram Rao:—

"The Government should not undertake any responsibility in regard to the investment."

Mr. Krishna Aiyangar.—

"There is a general recognition of the difficulty of the position to which the foreman is driven by the Clause being retained in its present form. That the foreman is entitled to greater latitude in the selection of Banks and that he should not be controlled by the subscribers are also fairly clear. The main objection urged by Mr. Subba Aiyar rests on considerations of policy; *i. e.*, whether the Government should lend themselves to having anything to do with the selection of the securities in which the chitty fund is invested, and if one of them finally turn out to be unsound, whether it would not cast some reflection on the fair name and capacity of Government in having made the selection. If the objection is mainly rested on that sentiment-al ground or on grounds of policy, I have absolutely no objection to the Bank being limited to the Government Savings Bank. If I am at liberty to modify that Section, I would restrict it to the Government Savings Bank alone. Nobody has any right to complain of it. It may be that some

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other Banker may give the party concerned a higher rate of interest. But so far as the sufficiency of security goes, he cannot have a better security. It was because the Select Committee introduced Clause (10) in Section 7 and altered sub-section (2) of Section 17, and because sub-section (1) of Section 10 authorises the alteration of the variola by a subsequent resolution, that I thought that the real difficulty of the foreman ought to be realised. If the Council would permit me, I am prepared to accept the suggestion of Mr. Subrahmanya Aiyar that the liability of the foreman shall be determined the moment he invests the amount in any Bank approved by the subscribers. If it is still held that the foreman, in spite of all his difficulties, ought finally to satisfy the claims of the subscribers, then a more satisfactory solution of the difficulty would be to omit Clause (10) of Section 7 and sub-section (2) of Section 17 and lay down that the foreman shall invest the same in the Government Savings Bank. I think that will meet all possible objections. It may be said that the rate of interest in the Savings Bank is low, but we are more concerned with conserving the capital for the subscribers. Some of my friends on the other side said that, as a question of policy, the Government ought not even to go the length of enumerating a few securities, as it is likely to be regarded as advice at a later stage. It is only the nervousness of my friends that the Government should be safe from the remotest imputation that makes them say so. I suggest that the interests of all concerned are fairly met by restricting the Bank to the Travancore Government Savings Bank. The latitude that was given to the foreman and the subscribers was with a view to help them to earn a higher rate of interest. But, more than higher rates of interest, I submit there is the necessity for conserving the capital, guaranteeing the due return of the prize amount when the subscriber offers security. It is only pending the tender of sufficient security by the subscribers that the money has to be temporarily invested. I may again submit that if my friends on the other side are prepared to accept this solution to restrict the Bank to the Government Savings Bank, no question of principle comes in at all."

President :—"The Government may not be prepared to restrict such investments to one Bank alone. Are you in favour of pressing your amendment?"

Mr. Krishna Aiyangar:—

"I cannot withdraw my amendment, especially when everybody in the Council has said that the position of the foreman under the Section as it stands is inequitable. Everybody has said that the foreman is entitled to relief against the disastrous consequences of being forced to accept an investment not chosen by him. I am even prepared to accept the suggestion that the Bank may be restricted to the Government Savings Bank and, as a consequential result of that, we shall have to omit Clause (10) of Section 7."

President.—

"Gentlemen.

I have heard with considerable profit, the observations made by all of you. As Mr. Krishna Aiyangar has said and as the general sense of the Council indicates, there is certainly sympathy in favour of giving the right of choice of the Bank to the foreman. It is not fair that he should be responsible to the subscribers for payment of monies to them and that at the same time he should have no voice in the selection of a particular security or Bank in which money is to be deposited. It is certainly reasonable that he should be given the right of selecting the Bank if he is to be held responsible for payment of the monies to the subscribers. Mr. Krishna Aiyangar's amendment goes some way to meet that requirement. No doubt, the foreman should not be given absolute freedom in the selection of the Bank, but he should be given freedom to the extent of choosing one of a number of Banks nominated by the Government. One of the objections to this course is that it is not necessary or desirable and that it is a bad policy that Government should prefer certain Banks to others and nominate them as sound, thereby implying that others are not sound; this is a reasonable objection. The other objection is that Government indirectly take upon themselves the responsibility as to the solvency of particular Banks nominated by them and thereby the chance of misleading the public. There is, no doubt, considerable force in that objection also. Personally, I am for the Government nominating the particular Banks or securities, in preference to leaving the matter to the subscribers. The question is this. Should we give protection to the foreman to a limited extent or should the Government have no choice at all? If power be given to the Government for nominating the Banks, the chances are that the Government will mention only such securities as the Government Savings Bank and the like, that is to say, the Government would recognise only such securities as could be reasonably trusted. It may be perhaps unfair to restrict the investment to the Government Savings Bank when there are other equally good securities carrying higher rates of interest. After all, it is only a question of choice and I believe it is safer on the whole to accept Mr. Krishna Aiyangar's amendment than to leave the Section as it is. The idea of Government nominating securities or providing advice in the matter of investment is not a new one. This occurs already in some of the enactments. The Charitable Endowments Regulation is an instance in point. Of course, as I said before, the Government will select only such securities as could be reasonably trusted."

After some more discussion, Mr. Krishna Aiyangar's amendment was carried.

The Council adjourned at 2-20 P. M. for lunch and re-assembled at 3 P. M.

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Mr. Subba Aiyar:—

"In view of the amendment to Section 17 (2) just passed, the amendment proposed by Mr. Gopala Pillai—to delete the expression 'likely to be affected by such resolution' in Clause (11) of Section 3—may be accepted".

The amendment was accordingly carried.

SECTION 20.

Mr. Krishna Aiyangar moved, in order to make the meaning of Section 20 clear, that the same be recast as follows:—

"When there are more foremen than one in a chitty, none of them shall withdraw from it unless such withdrawal is assented to in writing by all the non-prized subscribers".

Mr. Subba Aiyar accepted the amendment and the Council adopted it.

SECTION 22.

Mr. Krishna Aiyangar moved that the words 'and shall have effect from the date of such entry' in lines 4 and 5 of sub-section (1), be deleted.

Seconded by Mr. Gopala Pillai.

Carried.

Mr. Krishna Aiyangar again moved that the words 'date of such entry' in line 2 of sub-section (2) be replaced by the words 'dates of such removal and substitution.'

Seconded by Mr. Rengaswami Aiyangar.

Carried.

SECTION 25.

Mr. Govinda Menon proposed that Section 25 be numbered as Section 25, sub-section (1) and that the following be added as sub-section (2):—

"If the prized subscriber be the foreman who has substituted himself in the place of a defaulting non-prized subscriber, he shall, unless otherwise agreed to in writing by all the non-prized and unpaid prized subscribers, furnish sufficient security for the payment of future subscriptions and of the amount due to the defaulting non-prized subscriber under Section 23, before drawing the prize amount, or shall invest such prize amount in accordance with the provisions of Section 17 sub-section (2)."

In support of his proposal, he spoke as follows:—

"During the continuance of a chitty, there may be many occasions when the subscribers make default in paying their subscriptions and when the foreman may have to place himself in the position of the defaulting subscribers. My contention is that when he gets the prize, he should be treated like ordinary subscribers and should be asked to find security or to invest the amount under Section 17, sub-section (2). This is almost a corollary to the provisions in Section 15, sub-section (1). If my amendment is not allowed, the said provisions will become more or less useless. The foreman could, by the method of circumventing, lay hold of a good deal of money".

Seconded by Mr. Gopala Pillai.

Mr. Subba Aiyar:—

"I oppose the amendment. I have already explained that it will be hard upon the foreman to ask him to give security for more than twice the chitty amount. If the subscribers so desire, they may make a provision in the variola itself for the payment of money in cases where the non-prized subscribers default and the foreman takes their place. I do not know whether a foreman will circumvent after giving security enough for the realisation of twice the chitty amount, which in effect will, in the case of immovable property, be equal to more than three times the chitty amount".

Mr. Govinda Menon:—

"If the foreman places himself in the position of a defaulting subscriber and if he draws the prize amount, is it not reasonable to demand security from him for the prize amount? The original security to be furnished by the foreman is intended to meet the same difficulty. That object will be defeated, if he is allowed to get the prize amount without security. Mr. Subba Aiyar referred to the desirability of making the necessary provisions in the variola itself. In that case, every provision of the Regulation may be left to be inserted in the variola".

The motion was put to the vote and lost.

SECTION 27.

Mr. Govinda Menon moved that this be numbered as Section 27 (*a*) and that the following be inserted as Clause (*b*):

"A foreman receiving payment of any amount as a consolidated payment of all the future subscriptions from a defaulting prized subscriber shall, unless otherwise agreed to in writing by all the non-prized and unpaid prized subscribers, furnish sufficient security for the payment of

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such future subscriptions, or shall invest such amount in accordance with the provisions of Section 17, sub-section (2)."

Mr. Gopala Pillai, in seconding the motion, said as follows :—

"It is not enough to say that the position of the foreman is rendered difficult by asking him to find security for more than twice the chitty amount. The interests of the subscribers have also to be taken into consideration. The foreman comes by a large sum sometimes, and has to account for it to the subscribers and if he does not pay, the position of the subscribers is also rendered difficult. Some provision has therefore to be made for safeguarding the interests of the subscribers in the cases mentioned by the mover. In fact one of the objects of this Bill is to safeguard the interests of the subscribers. One of the complaints before the Assembly was that the foremen of chitties alienated their properties after starting the chitties. That is one of the circumstances that ushered this Bill into existence, as the learned mover of the Bill has himself admitted in his speach in introducing it. The foreman must take care that he be in a position to safeguard the interests of the subscribers. It is the question of swindling that has been always complained of. The foreman should therefore be asked to find security or invest the amount, in the cases pointed out by the mover of the amendment."

Mr. Subba Aiyar.—

"I oppose the motion. I sympathise with Mr. Gopala Pillai when he says that the foreman may swindle the subscribers. But, we have got to take into consideration the circumstance that the foreman will hereafter be a respectable person and will give security for at least twice the chitty amount. It will be to his interests to see that the chitty does not terminate so as to give a cause of action to all the non-prized subscribers to claim a refund of the subscriptions paid by them. Secondly, when the foreman himself has to offer security, he will always see that money is paid on sufficient security to the prized subscribers, which will minimise defaults being committed by the prized subscribers. Thirdly, whether the prized subscribers pay or not, the foreman is liable for payment of the prize amount. To demand security in the cases indicated by the mover of the amendment, will be to treat the foreman with absolute distrust, which may not be justifiable. Further this would make it impossible for the foreman to recover the subscriptions through a Court of Law, as every prized subscriber will demand security for the suit amount, thus bringing about additional complication and trouble."

Mr. Govinda Menon:—"I have nothing to add to what I have already said. I would simply say that there would be practical difficulties, if my amendment is not accepted."

The motion was put to the vote and lost.

SECTION 30.

Mr. Krishna Aiyangar moved that Clauses (1) and (2) be deleted and that the Section be recast as follows: –

"Every transfer of the rights of a non-prized subscriber in the chitty shall, subject to the equities enforceable by the foreman, be recognised by him, unless the transfer was effected with a view to defeat the provisions of any law."

In moving the above amendment, he spoke as follows:—

"Sir,

The Section as it stands begins with the words 'such transfer', meaning thereby transfer mentioned in Section 29, by a non-prized subscriber, of his rights in the chitty. Reading Clause (7) of Section 3, which contains the definition of the word 'subscriber', and also Section 29, the latter cannot have reference to both voluntary and involuntary transfers. I therefore omit the word 'such' and begin with 'every transfer of the rights of a non-prized subscriber'. The transfer according to my amendment means voluntary or involuntary transfer. The words 'subject to the equities enforceable by the foreman' convey a well understood principle of common law and are intended to safeguard the rights of the foreman. I move next for the omission of Clauses (1) and (2). The reasons for omitting them are set forth at length by my friend Mr. Govinda Menon in his dissenting memorandum. I shall however briefly refer to them. Clause (1) relates to the solvency of the transferee. Is it to be left to the discretion of the foreman to say whether a tranferee is solvent or not ? The solvency of the transferee does not arise for purposes of recognition. A man may not be solvent, and yet if he is prepared and willing to pay the subscriptions on due dates, the foreman is in no way prejudiced. He may not be solvent in the sense of possessing property in his own name. His father or other relations may be willing to finance the scheme."

President: –

"Instead of moving your amendments as a whole, can you split them up and move separately, first with reference to Clause (1) and then Clause (2) ?".

Mr. Krishna Aiyangar: "Yes, Sir, I move the omission of Clause (1). Before the foreman refuses to recognise the assignment or transfer, we have just to see how far he would be prejudiced by being compelled to recognise it. That should be the only test. Whether a man gets the rights of a non-prized subscriber by operation of law or by act of parties, it should not in any way affect the question of recognition unless we are satisfied that the foreman will be seriously prejudiced by his being compelled to recognise against his will. What are the rights of the foreman as against a subscriber ? The right of the foreman is to have subscriptions paid on due dates, and, when the subscriber gets his prize, to insist on sufficient security being

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given guaranteeing due payment of future subscriptions. The right of the foreman to receive the subscription from the transferee need not depend upon the solvency of the transferee as determined by the foreman. Supposing the subscriber does not pay his subscriptions, the foreman has merely to say that the subscriber is removed from the chitty, and he may substitute some one else. I want the Council to attach to the involuntary transfer the same rights as to the voluntary transfer. There is no difference in principle between a transfer by operation of law and one by act of parties. The only ground on which it may be said that the position of the foreman will be prejudiced will be that he may not get sufficient security when the time for the payment of the prize amount comes. He is at perfect liberty to insist on sufficient security being given. Ordinarily, we need not think of rejecting money produced by the transferee. Supposing an apparently solvent party on getting a transfer goes on paying subscriptions for two or three instalments and then defaults, it cannot be said that the position of the foreman has become worse than what it was at the time of the transfer itself. As a question of practical working, I may just submit that considerable difficulties will arise if this provision is allowed to exist. What is the definition of the term 'solvent'? Solvency, as we understand it ordinarily, means ability to pay one's debts. Supposing that this is the sense in which the term is used and supposing that it is a case of difference of opinion between the foreman and the subscribers, is the foreman's opinion to prevail? Supposing that we retain that Clause and empower the foreman to decline to recognise the transferee on the ground that he is not solvent, it is open to the transferee to take the whole case before a Court of Law and ask for adjudication that he is solvent and that he is financially able to make the contributions on the due dates. In the interval, the foreman makes his own arrangements and the transferee obtains a decree that the foreman did not exercise his discretion properly, and then there will be a good deal of disturbance. To allow the foreman the absolute right of declining to sanction a transfer is a perfectly intelligible position. It is on considerations of some sort of personal confidence that a man is accepted as a subscriber. Apparently, that position is not taken in the Section. I submit that the foreman is in no way prejudiced by his being compelled to recognise all transfers unconditionally."

Mr. Subba Aiyar:—"The term 'subscriber' includes a transferee whether by operation of law or in writing and, therefore, every transferee ordinarily steps into the shoes of a non-prized subscriber and no recognition by the foreman is necessary. Section 30 however makes an exception in the case of voluntary transfers. The Section, therefore, is intended to apply only to a voluntary transfer. In the case of involuntary transfers, say, for instance, if a man purchases the subscriber's rights in a Court auction or if a subscriber dies, the foreman is bound to recognise the purchaser, or the heirs whether they are solvent or insolvent. In such cases, the discretion of the foreman is taken out of the Section. Where there is a voluntary transfer, is the foreman to be bound to recognise the transferee even though he does not consider him solvent? Of course, if the foreman unnecessarily declines to recognise the transfer on the ground that the transferee is not solvent, a Court of Law may, at the instance of the transferee, issue an injunction to the foreman restraining him from substituting another person. This is not a difficult matter. I doubt whether, under these circumstances, the foreman who has the responsibility of conducting the chitty should be compelled to accept one who to his mind is not solvent. I oppose the motion."

Mr. Gopala Pillai:—

"I am in favour of the amendment proposed by Mr. Krishna Aiyangar. Under the common law, every man has a right to transfer whatever title he has in any property, either movable or immovable. There is no reason why the transfer of the rights in a chitty should be made to differ from the transfer of other rights. The only question here is whether the subscriber should be allowed to transfer his rights or whether the discretion of the foreman should be allowed to prevail in the matter. It is for a Court of Law to decide whether the transferee is solvent or not at the date of transfer. Under the provision as it stands, the foreman is not given absolute power or discretion. Even in the case of prized subscribers, where the foreman does not accept the security on the ground that it is not sound, a Court of Law has the power to say that the security is good and that the foreman is wrong in having refused to accept it. In the same way, the question of solvency of the transferee may be gone into by the Court. If the transferee defaults, the foreman will not be in a worse position than when the transferor himself defaults. The transferor did not default by the assignment. He simply asks another man to pay. There is absolutely no reason why, instead of the transferor himself paying, he should not ask his agent, with certain rights, to pay. Under these circumstances, I think there is no reasonable ground for not accepting the amendment."

Mr. Krishna Aiyangar:—

"Mr. Subba Aiyar has made a distinction between a voluntary transfer and an involuntary transfer. With very great deference to him, I may just submit that there is no justification for making that distinction. According to my friend, the purchaser in Court auction of the rights of a non-prized subscriber would appear to be entitled to have higher rights, because his transfer was effected through a Court. We are not concerned as to whether the transfer was effected by the party or through coercive process of a Court of Law. In a Court sale, the purchaser does not get anything more than the rights of the judgment debtor. Why then should we make any distinction between a transferee by act of parties and a transferee by operation of law? My friend said that, in the case of representatives of the deceased subscriber, they should be

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allowed to step into the shoes of the original subscriber. The arguments for the recognition of involuntary transfers apply with equal force to the case of voluntary transfers. The distinction drawn between a voluntary and involuntary transfer is, I submit, too fine to justify the differential treatment proposed".

President:—

"Messrs. Krishna Aiyangar and Subba Aiyar say that the Clause refers only to cases of voluntary assignment. If a subscriber dies, then his rights and liabilities as a subscriber devolve upon his legal representatives. If the subscriber is governed by Marumakkathayam law, his rights and liabilities devolve upon the next Karanavan, and if he is a Makkathayee, upon his son. That is one instance of involuntary transfer. There is also another instance of involuntary transfer referred to by Messrs. Subba Aiyar and Krishna Aiyangar, *i. e.*, where the assignment takes place in spite of the transferor, when the rights of the subscriber are purchased in Court auction. The case of voluntary transfer alone is referred to in Section 29. The question is whether, when such voluntary transfer is in favour of a person who is regarded as insolvent by the foreman, the latter should be compelled to recognise the transfer. Very often, the foreman is largely influenced by personal considerations in choosing a subscriber. For instance, if a person, though rich, does not happen to be a man of honor, if he is not a man of his word, the foreman is not likely to take him as a subscriber. On the other hand, a poor man may be regarded as a man of character and may be admitted by the foreman as a subscriber. Thus, personal considerations play an important part in the foreman's accepting a particular person as a subscriber. When the original subscriber transfers his rights, the Section says that, if the foreman regards the transferee as a person not able to fulfil his engagement, *i. e.*, not able to pay his future subscriptions regularly, the foreman should not be compelled to recognise such a transfer. It seems to me that the principle upon which the Section is framed is a reasonable one. Again, it is an accepted principle of law that generally no liability can be transferred. The subscriber to a chitty has certain rights as against the foreman. He has also certain liabilities towards the foreman, as for instance the liability to pay subscriptions regularly. When a person has no right to transfer his liabilities, the person to whom such liabilities are due should not be compelled to accept the transfer of the liabilities to a person who he thinks is unable to discharge them. I think that it would be dangerous in principle to compel the foreman to accept the transferee who is regarded by him as insolvent, and that the discretion vested in the foreman under the Clause should not be disturbed."

The motion was put to the vote and lost.

Mr. Krishna Aiyangar:—

"I now move that Clause (2) of Section 30 be omitted. Here the question ought not to be determined by the capacity of the transferee to enter into a contract. It is not a question of entering into a contract for the first time. As a general proposition, every transferee ought to be allowed to work out the rights of his transferor. When an exception is proposed to that ordinary rule, we have to examine it and see whether there is any basis for the objection against the recognition of the claim. The foreman will not in any respect be prejudiced on the basis of his having entered into contract with one who may, on attaining majority, disown it. So far as the minor's right to insist on recognition and to pay subscription as it falls due is concerned, it is not a question of any liability being incurred by the minor when he insists on recognition. He offers chitty money regularly and his liability comes in only when money is paid to him, which the minor might disown at a later stage. No foreman will pay money on account of a minor without demanding security. Subject to this protection, no foreman ought to be given the opportunity of refusing to recognise the assignments. Oftentimes, we come across parents getting assignments in the names of their children. It may be possible for persons to get assignments of the rights of subscribers in favour of insane relations just to benefit them. What is the broad question of policy or principle which entitles the foreman to say that he will not recognise this assignment? I am prepared to concede that the foreman should be provided with all facilities for conserving his interest and for guarding against his being possibly prejudiced. I think that the objection by the foreman ought not to be allowed to proceed any further on the ground of insanity or minority."

Seconded by Mr. Govinda Menon.

Mr. Subba Aiyar:—As a minor or an insane man is always represented by his guardian, I do not think that there is any objection to the amendment being accepted."

Mr. Krishna Aiyangar's motion was carried.

Mr. Krishna Aiyangar:—

"I now move for permission for recasting the Section so as to conserve the rights under involuntary transfers. Though there was some sort of concession by my friend Mr. Subba Aiyar in the course of the discussion that the rights of the transferee under operation of law were different, there is no recognition accorded to them in the Bill itself. As a question of principle, it would be fair to place both classes of transfers on the same footing. If the Council is of opinion that the solvency of the transferee shall be the final test in the matter of recognising the assignment by the subscribers, how does the position of the transferee under operation of law become better simply because he has got the transfer signed by the Court?"

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President:—"For obvious reasons, the transferor himself has no power there. In spite of him, his rights are sold in auction. With reference to your present amendment, I may say that the position as urged a little while ago is that the foreman ordinarily takes care to choose the subscriber who would be able to make his contributions on due dates and who would not put the foreman to the necessity of finding other men."

Mr. Krishna Aiyangar:—

"Supposing that is to be the guiding principle, if the auction purchaser is not solvent, how can the foreman recognise the transferee?"

President:—"So, you say that the foreman should be allowed to reject the auction purchaser of the subscriber's rights if he is not solvent."

Mr. Krishna Aiyangar:—"I submit the same reasoning will apply. I however move that the Section be amended so as to take away the discretion of the foreman in recognising involuntary transfers."

Mr. Govinda Menon:—"I second the proposal made by Mr. Krishna Aiyangar."

Mr. Subba Aiyar:—

"With reference to transfer by operation of law, it is entirely omitted from the Section. Therefore I oppose the motion."

Mr. Krishna Aiyangar:—

"The Section may not affect the transfer by operation of law. The heading of the Chapter is given as 'Transfer,' and if this is to be a self-contained piece of legislation, any rights that the Council are prepared to confer upon any class of transferees might with advantage be embodied therein."

The motion was put to the vote and lost.

SECTION 31

Mr. Krishna Aiyangar moved that the words "and shall take effect from the date of such entry" in sub-section (1) be deleted.

Seconded by Mr. Govinda Menon.

Carried.

SECTION 32.

Mr. Krishna Aiyangar proposed that the words 'in the variola' be inserted between the words 'provision' and 'to' in line 2.

Seconded by Mr. Govinda Menon.

Carried.

Mr. Raman Pillai proposed that the word 'deceased' in line 3 be omitted.

Seconded by Mr. Raja Ram Rao.

Carried.

SECTION 33.

Mr. Krishna Aiyangar moved that the words 'when the heirs of a deceased foreman do' in Clause (1) be omitted, and that the words 'when the legal representative or guardian of the foreman does' be substituted.

Seconded by Mr. Gopala Pillai.

After some discussion, the words 'when the legal representative of a deceased foreman or the guardian of a foreman of unsound mind does' were adopted by the Council in the place of the words proposed to be omitted.

Mr. Krishna Aiyangar proposed that the words "or on any other date before the next instalment as may be agreed upon by a special resolution" be inserted at the end of Clause (6), and spoke as follows:—

"The Clause as it stands is productive of disastrous consequences even to a very honest and financially sound foreman who never committed a default. If, say for instance, the foreman is unable to conduct a chitty on a particular date, owing to causes over which he has no control, the consequences are that he is to pay at once all the subscriptions due to non-prized subscribers. I may suggest that there is a possibility of the subscribers or a majority of them permitting him to continue the chitty. Hence my amendment to the Clause."

Seconded by Mr. Gopala Pillai.

Carried.

Mr. Krishna Aiyangar moved that the words 'if there is a provision to the contrary in the variola or' be inserted between '(4)' and 'if' in line 2 of the Proviso.

Seconded by Mr. Govinda Menon.

The Council adopted Mr. Krishna Aiyangar's amendment, and also resolved to delete the words 'and (4)' in the same line and to insert the word 'and' before the word '(3)' in the said Proviso.

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SECTION 47.

Mr. Gopala Pillai moved that the figure '12' be substituted for '18' in line 2.

Seconded by Mr. Govinda Menon.

Mr. Subba Aiyar :—

"I beg to oppose the motion. So far as paddy transactions go, the common law of the land recognises 20 per cent. interest as reasonable. The Courts have all along recognised the same rate of interest and have allowed accumulated interest equal in quantity to the principal. In 23 T. L. R. 100, interest even up to 40 per cent. was allowed as the total quantity did not exceed the principal. The High Court however threw out the suggestion that it is desirable to limit the rate of interest to 20 per cent. In the Jenmi and Kudiyan Regulation, the rate of 18 per cent. is allowed on arrears of Michavaram payable in kind. For the sake of uniformity, this rate has been adopted in the Bill. In these circumstances, I do not think that the amendment can be accepted."

Mr. Gopala Pillai :—

"In this connection, we have to remember that the interest Regulations I and IV of 1010 were enacted for the purpose of fixing the rate of interest on money. Several decades have passed since and the Regulations remain the same. There is absolutely no reason why there should be a difference of interest maintained in the case of grain as compared with the case of money. Now in this country the chief staple grain is paddy and it is easy to find markets for the grain and it could be easily turned into money also. There was a time when perhaps there was abundance of grain, when there was the difficulty of finding markets for the sale of grain and when coins were rare. It was under these circumstances that a justification existed for making a difference between the rates of interest on money and on grain. But we have long passed that age. Now, let us see who are to be affected by this part of the Bill. I submit that it is the agricultural population that subscribe to these grain chitties and that they try to make savings out of their slender income from agriculture. It will also be noted that, in such cases of grain chitties, the capital will not be very large. The agricultural population are generally poor. We may also take into consideration the condition of agriculture at present which has fallen very low from the prosperity of bygone ages, and distress has become so acute that the Government have come to their aid and are devising measures to alleviate the same. There is absolutely no reason why we should not consider their present condition apart from their past. I also submit that five years ago an amendment to the Interest Regulation was proposed, and that on that occasion there was a storm of opposition from the Non-official Members of this Council. The unanimity of their opinion was so strong that the learned Mover of the amendment then thought it prudent to withdraw that measure at the instance of the then President. I submit that it was the intention or the opinion of the Government then that the time had not come when the Interest Regulation could be amended. The chief ground of opposition was that the Interest Regulation would affect the agricultural population and that it was not wise in their interests to introduce any law which would affect them and increase their distress. During the short space of five years, the condition of the agricultural population has not, to any extent, been changed, so as to enable us to insert this provision in the Bill at present. According to the learned Mover, this provision has been borrowed from the Jenmi and Kudiyan Regulation. From this, one would be tempted to believe that the interest provided for in that Regulation has been universally accepted or approved of, so that we might build the present structure on that basis. But the rate of interest in the Jenmi and Kudiyan Regulation has been questioned and it has also been impeached in later years in various quarters by men of culture and mature judgment. There has been a movement to modify that rate of interest. Again the rate of interest prevailing in the adjoining British territories in the Madras Presidency does not exceed 12 per cent.

President:—

"I have to contradict you on that point. In British Malabar we find in practice that it is 20 per cent. It is called മുപ്പലിശ".

Mr. Mahadeva Aiyar:—

"It is so in Travancore also."

Mr. Gopala Pillai:—

"I am not speaking of the practice. I am speaking of what is found in the Statutes. If we speak of the practice, then we have also here people getting interest at the rate of one chuckram per rupee".

President:—

"Is 20 per cent. recognised in Travancore ?"

Mr. Krishne Aiyangar.—

"It comes fairly frequently in our part of the country".

Mr. Subba Aiyar:—

"The High Court have said that even if it were 40 per cent. they were bound to accept it when the amount of interest does not exceed the principal. The rate of 20 per cent. interest has been in existence for several years."

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Mr. Gopala Pillai:—

"The High Court ruling held it so and that ruling is in force and it cannot be changed except by the Legislature. I submit that the rate of interest fixed in the Bill is too high for the agricultural population and that therefore it has to be reduced."

Mr. Rengaswami Aiyangar:—

" May I say a few words, Sir, on the issues of principle raised by Mr. Gopala Pillai in the course of his observations ? I don't wish to enter into the discussion of details of what may be regarded as the equitable maximum limit of interest on grain-loans. I should like merely to make some remarks, from the standpoint of accepted economic principles and economic practice.

To begin with, Mr. Gopala Pillai has stated that there is absolutely *no* reason why there should be *any* difference whatever between the rates of interest charged respectively for money-loans and grain-loans. May I point out that there *is* a reason for the difference, on broad grounds ? The rate of interest is the return for the use of the loan, and in determining it, regard must be had to seeing that the lender is not worse off, when the loan is repaid than when it was contracted. That is, *due* provision has to be made, in the rate of interest, for any variation in the purchasing power of the capital amount. The rate of interest depends on risks of various sorts, including the risk of fluctuations in purchasing capacity. Hence, the *more* the liability to variation in this respect, the *higher* will be the rate of interest. Now, money represents *general* purchasing power, and the fluctuations in the purchasing power of money, because they depend on exchanges *in general*, will be *within narrower* limits, than variations in the purchasing power of any *single* commodity or group of commodities,—say, grain. This is why a lender of grain may be a great loser or may gain much by alterations in the price-level of grain, as compared with the lender of money, whose loss or gain in purchasing power will be of a more restricted kind. This is, I think, the ground for charging a higher interest on commodity-loans as compared with money-loans, and, in this matter, as was pointed out in the discussion, the practice is common. It is in accord with economic principle, and has to be respected.

There is the other point of usury, and the consideration due to agriculturists, raised by Mr. Gopala Pillai. We are all interested in helping the agriculturists, and the question simply is 'are we likely to benefit them by lowering the maximum rate of interest allowed on grain'? The Raiyat wants capital—in money or in grain—and the more easily he gets loans, the more is he helped. Is he likely to be assisted by the suggested reduction in the maximum interest? It is an admitted principle of Economics that, in the long run, usury laws press against the *very* class they are designed to protect. They are ineffective in protecting the borrower, as their provisions are almost invariably defied or undermined. Thus, in order to evade the law, the lender may take the whole of the stipulated interest or that part of it, which exceeds the legal maximum, *beforehand*. He may also claim the rate of interest allowed by the law, sometime later, as the Courts may not recognise the prepayment. Consequently, after some time, the operation of the usury law—of the prescription of an unusually low rate of interest as the maximum—may have the effect of stinting the supply of loans. It may even force the lender to impose on the borrower such *additional* burdens as may be considered by the lender as sufficient to safeguard him against loss or penalties in the Courts of Law. This has to be remembered when we are asked to fix any maxima of interest-rates. If we fix a *low* maximum rate, it will fail in its object. The aim of the advocates of the measure is to make capital available to cultivators in sufficient quantity and on easy terms. If capital is to be made thus available, the best way to ensure it is to see that there are no obstructions to the free play of lending and borrowing. By artificially depressing the rate of interest below the current market rate, one of two things should, I think, happen. There is the honest capitalist and the dishonest capitalist. The former may not care to break the law and will not lend to agriculturists at rates lower than what he could make by diversion of his capital to other uses; and in the result, a part of the capital available to cultivators will be withdrawn. The terms on which the remainder will be lent will, in consequence, be bound to be more severe. As regards the dishonest capitalist, no usury law will deter him from exploiting his opportunity. The borrower will only become, as the result of the law, his willing or unwilling ally and abettor. Hence, it will be, I submit, useless, to impose statutory maxima of rates of interest. And, in any event, if such maxima are to be imposed at all, it would be best to make them agree with the highest current rates. I think, therefore, it would be best to leave the Section as it now reads".

Mr Gopala Pillai's motion was put to the vote and lost.

The consideration of the Bill being over, Mr. Subba Aiyar moved that the Bill, as settled by the Council, be finally read on a future day of which notice should be given.

Seconded by Mr. Mahadeva Aiyar.

Carried.

THE PLANT PESTS BILL.

Mr. Subba Aiyar presented the report of the Select Committee on the Plant Pests Bill and moved that the report and the Bill be taken up for consideration.

Seconded by Mr. Rengaswami Aiyangar.

Carried.

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